IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23-3-2007

Coram

The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

W.P.No.22697 of 2006 and M.P.No.1 of 2006

Management,
Chennai Central Cooperative Bank Ltd.,
114/1, Prakasam Road,
Chennai - 108. ... Petitioner

Vs.

1. The Joint Commissioner of Labour,
(Appellate Authority under the
Payment of Gratuity Act, 1972)
D.M.S.Office Complex,
Teynampet, Chennai - 600 006.

2. The Assistant Commissioner of Labour,
(Controlling Authority under the
Payment of Gratuity Act, 1972),
D.M.S.Office Complex,
Teynampet, Chennai -600 006.

3. G. Varadarajan
4. A. Chandrasekaran
5. S. Thulasiraman
6. M.K. Kothandaraman
7. K. Vinayagamoorthi
8. K. Nageswara Rao
9. T.S.Viswanathan
10. E.K. Sambandam
11. T.K. Rathinavelu
12. K.C.Sundaresa Rao
13. R. Nagaraja Rao
14. R. Kanniappan
15. S. Hemavathy
16. B. Kannappan
17. R. Viswanathan
18. A. Shanmugasundaram
19. A. Samraj

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20. M. Balaiah Chetty
21. V. Meenakshi Sundaram
22. A. Vishnumoorthy
23. V. Kumaravelu ... Respondents

Prayer: Writ petition filed under Article 226 of Constitution of India, praying this Court to issue a writ of certiorari calling for the records pertaining to the order dated 10.11.2005 in PGA.No.41 to 61 of 2005 passed by the first respondent confirming the order dated 10.3.2005 in PG.No.185 to 196 of 2000 and PG.No.64 to 73 of 2001 passed by the second respondent and quash the said orders dated 10.11.2005 and 10.3.2005.

For Petitioner : Mr.P.Anbarasan

For RR-3 to 23 : Mr.K.N.Ravichandran

O R D E R

By consent of both sides, the writ petition itself is taken up for final disposal.

2. Petitioner seeks to quash the order dated 10.11.2005 in PGA.No.41 to 61 of 2005 passed by the first respondent confirming the order dated 10.3.2005 in PG.No.185 to 196 of 2000 and PG.No.64 to 73 of 2001 passed by the second respondent.

3. The brief facts necessary for disposal of the writ petition are as follows.

(a) Petitioner/Chennai Central Co-Operative Bank Ltd., is a Society registered under the Tamil Nadu Co-Operative Societies Act, 1983, which is challenging the order granting payment of additional gratuity to respondents 3 to 23. Respondents 3 to 23 have filed claim petitions before the second respondent/Controlling Authority under the Payment of Gratuity Act, 1972, in P.G.Nos.185 to 196 of 2000 and P.G.Nos.64 to 73 of 2001. The second respondent passed orders on 16.11.2000 and 23.7.2001 stating that the respondents 3 to 23 herein are entitled to additional gratuity as per Section 12(3) settlement made under the Industrial Disputes Act, 1947. The appeal filed before the first respndent in PGA.No.1 to 12 of 2001 and PGA Nos.217 to 222 of 2001 were also dismissed by orders dated 16.4.2001 and 26.3.2002.

(b) The petitioner challenged those orders in W.P.Nos.9904 of 2001 and 14187 of 2002. This Court allowed the writ petitions on 28.6.2004 and remitted the matter before the second respondent to consider the issue as to whether the personnel at the managerial level are entitled to the benefits of settlement under section 12(3)

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of the Industrial Disputes Act, 1947, and pass orders in accordance with law on merits within a period of three months.

(c) The second respondent Controlling Authority, consequent to the said remand order, reopened the case in P.G.Nos.185 to 196 of 2000 and P.G.Nos.64 to 73 of 2001 and passed orders on 10.3.2005 holding that the respondents have to be termed as employees under section 2 (e) of the Payment of Gratuity Act, 1972, and they are entitled to the benefits of the above settlement. The appeal preferred before the first respondent was also dismissed by order dated 10.11.2005.

(d) The said order of the second respondent as confirmed by the first respondent is challenged in this writ petition on the ground that the respondents 3 to 23 are all officers on the date of settlement and on the date of their retirement and therefore they are not entitled to the benefit of the settlement as they are not workmen and also not members of the Trade Union, which signed the settlement. It is also stated in the affidavit that the findings given is contrary to the earlier order of this Court referred above, in view of the fact that the Managing Director alone is not the Supervisory Authority and even the supporting officers are doing supervisory work and they cannot be termed as workmen. The posts of Assistant Managers and Managers are equivalend in status to that of the Assistant Secretary and Secretary as defined in section 2(19) of the Tamil Nadu Co-Operative Societies Act, 1983. The claim of the respondents 3 to 23 is on the basis of settlement dated 17.12.1997 and the respondents who are not workmen are not entitled to claim additional gratuity relying on the said settlement and hence the petitioner prayed to quash the said order of the second respondent dated 10.3.2005 confirmed by the first respondent on 10.11.2005.

4. Counter affidavit is filed on behalf of respondents 3 to 23 wherein it is stated that Section 12(3) settlement is entered into between the petitioner Bank and all the five Employees' Union representing Employees and Staff before the Conciliation Officer viz., the Joint Commissioner of Labour, Chennai in line with G.O.Ms.NO.161 Co-operative Department dated 5.9.1996, before which the management of the petitioner Bank Employees Union negotiated with the Minister for Food and Co-Operation, Secretary to Government and Registrar of Co-Operative Societies. It was mutually agreed that for the purpose of calculation of gratuity, 26 days will be reckoned as a month not only in arriving at the pay, but also for calculation of length of service and as per Clause 47 First Part, it was implemented to all the employees and not extending the same benefit to the employees, who are in managerial cadre, is not justifiable. It is also stated in the counter affidavit that the petitioner Bank is continuing the beneficiary gratuity clause in the subsequent settlement dated 28.11.2003 and also covering the employees from the cadre of sub-staff to General Manager and thereby accepting all the employees as workmen. The authorities rightly held that the respondents herein were employees only as they do not have any

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managerial power like appointment, transfer, fixation of salary, initiation of disciplinary proceedings against the employees, which are the powers vested with the Special Officer/Managing Director only and not in the respondents 3 to 23 as per section 146 of the Tamil Nadu Co-Operative Societies Act, 1983. Section 12(3) settlement having been arrived at, it is not open to the petitioner to deny benefit as it applies to all staff. It is also contended in the counter affidavit that the second respondent factually found that respondents 3 to 23 are entitled to the benefit of additional gratuity as their claims are also covered under section 12(3) settlement. Respndents 3 to 23 even though are in the managerial cadre they are doing only supervisory work and do not exercise any function of managerial nature as stated supra or they are having any power to take policy decision with regard to the business of the bank. Under sub-section (5) of section 4 of the Payment of Gratuity Act, 1972, the respondents 3 to 23 are entitled to receive better terms of gratuity as per 12(3) settlement. The second respondent gave a factual finding with regard to the eligibility of these respondents to get additional gratuity, which was also confirmed by the first respondent, appellate authority and there is no perversity in the said factual findings warranting interference under Article 226 of Constitution of India.

5. The learned cousnel for the petitioner on the basis of the grounds raised in the affidavit argued that respondents 3 to 23 are not workmen and therefore they are not entitled to get the benefit under Section 12(3) settlement, which is applicable only to the workmen and not to the persons, who are in managerial position and also cited decisions in support of his contentions.

6. The learned counsel for the respondents 3 to 23 submitted that even though the respondents 3 to 23 are working in the managerial cadre they are only doing supervisory work without having any administrative powers like appointment, transfer, sanction of leave and taking policy decision and only the Managing Director is competent to take such decisions and therefore they are in effect workmen, entitled to get the benefits under Section 12(3) settlement. The learned counsel also submitted that this Court in the earlier writ petitions not decided the matter on merits and remitted the matter to the second respondent to find out whether the respondents 3 to 23 are entitled to the benefits under the settlement by specifically directing the second respondent to give a finding and consequently the second respondent gone through the matter on merits and gave a specific finding stating that the benefit of 12(3) settlement also covers the managerial staffs also and there is no perversity in the said finding, which was also confirmed in appeal and the factual findings having not been perverse, this Court need not set aside the same and prayed for dismissal of the writ petition.

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7. I have considered the rival submissions made by the learned counsel for the petitioner as well as respondents 3 to 23.

8. In the earlier writ petition filed by the petitioner in W.P.No.9904 of 2001 and 14187 of 2002 dated 28.6.2004, this Court found that the order of the Controlling Authority and the Appellate Authority passed earlier, nowhere dealt with the issue as to whether the benefit of Section 12(3) settlement is available to workmen alone or to the persons who worked in the managerial category. It was also held that at the time when the settlement was entered into whether they were workmen or not or any of them are parties to the settlement, in which case, such of those persons will be entitled to rely on the settlement. The discrimination meted out to the respondents 3 to 23 was also raised before the learned Judge specifically stating that the beneficial rate of gratuity was given to the managerial category persons and the same was not extended to the respondents 3 to 23. The said issue was also directed to be considered by the Controlling Authority. Therefore, the matter in issue raised in those writ petitions were left open to be decided by the second respondent on remand.

9. The second respondent considered the said issue and gave a specific finding that the managers are doing clerical work in day to day bank transactions and their supervising work is minimal. They cannot represent the bank to outside world, they cannot sanction loan, sanction leave to employees, initiate disciplinary action and to take any policy decision apart from having no discretionary power in handling or dealing with the affairs of the bank and all the said powers are vested with the Managing Director under Rule 146(2); (6); (7)(a)(i) to (iv), (b); (8) and (9) of the Tamil Nadu Co-Operative Societies Rules, 1988, and the Managing Director is defined as Chief Executive, who will have the overall control on the day-to-day administration of the Society. Rule 146 is extracted hereunder,

> "146. Powers and functions of Managing Director.- (1) The Managing Director shall be the Chief Executive of the society. He shall carry into effect the resolutions of the board which are in accordance with the Act, these rules and the by-laws and which are not against the interest of the society. He shall refer all other resolutions with details as to how, in his opinion, they are not in accordance with the Act, these rules or the by-laws or are against the interest of the society, to the Government in the case of an apex society and to the Registrar in the case of any other society.
>
> (2) The Managing Director shall have an overall control of the day-to-day administration of the society and all correspondence shall be

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conducted by him.

(3) The Managing Director may, with the approval of the board, institute or defend any suit or other legal proceedings on behalf of the society.

(4)(a) The Managing Director shall have power to operate the accounts of the society, to endorse and transfer promissory notes, Government and other securities held by the society and to sign, endorse and negotiate cheques and other negotiatble instruments, bonds (except bonds for moneys borrowed), receipt and all accounts and other documents connected with the business of the said society for and on behalf of the said society.

(b) The Managing Director shall have power to make arrangements for the proper maintenance of accounts and the custody of cash and other properties of the society.

(5) The Managing Director shall have the right to inspect the societies, which are members of, and have received financial assistance from the society and shall have the power to call for any records of, inspect the works financed by the society, and verify securities, cash and accounts relating to, such member society.

(6) It shall be the duty of the Managing Director to carry on the business of the society in accordance with the Act, these rules, the by-laws and the regulations, if any, framed by the board and approved by the Registrar.

(7)(a) Subject to the provisions in sections 73 to 77 and these rules, the Managing Director shall be the authority competent-

(i) to make appointments of the members of the establishment other than paid officers in accordance with the strength of each category and scales of pay prescribed by the board;

(ii) to transfer all the mambers of the establishment;

(iii) to grant leave of all kinds to all the members of the establishment;

(iv)(a) to award any punishment on any member of the establishment as specified in the rules.

(b) Appeals against the orders under sub-clause (iv) of clause (a) above shall lie to such authority as may be specified in the rules.

(8) The Managing Director shall exercise such other powers as may be delegated to him by

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the board.

(9) The Managing Director may, by order in writing, delegate any of his functions to any officer or servant of the society. He may, at any time, withdraw the functions delegated by him. The exercise or discharge of any function so delegated shall be subject to such restrictions, limitations and conditions as may be laid down by the Managing Director and shall also be subject to his control and revision. All such delegations of functions of Managing Director shall be placed before the board for its information."

From the above statutory provision, it is clear that the other managerial staff have no independent administrative powers and they can only supervise.

10. It is also decided by the second respondent that for the purpose of Gratuity Act, section 2(s) of the Industrial Disputes Act, 1947, is not applicable and only section 2(e) of the Payment of Gratuity Act alone is applicable and therefore there is no discriminatiion found between the workmen and non-workmen and persons belonging to the managerial or administrative capacity are also eligible to receive the gratuity.

11. Section 2(e) of the Payment of Gratuity Act, 1972, define 'Employee' as follows,

" "Employee" means any person (other than an apprentice) employed on wages, in any establishment, factory, mine, oil-field plantation, port, railway company or shop, to do any skilled, semi-skilled or unskilled, manual, supervisory, technical or clerical work, whether the terms of such employment are express or implied and whether or not such person is employed in a managerial or administrative capacity, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity."

From the above referred definition it is clear that the persons employed in the managerial or administrative cadre are treated as employees and entitled to get gratuity, which is more favourable, either in terms of award, agreement or contract. Section 14 of the Payment of Gratuity Act also states that the provisions of Payment of Gratuity Act or any rule made thereunder shall have a overriding effect notwithstanding anything inconsistent therewith containing in entitlement other than the Payment of Gratuity Act or any instrument or contract. Therefore the second respondent gave a specific finding that the definition of employee as defined in section 2(e) of the

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Payment of Gratuity Act, 1972, alone is applicable and section 2(s) of the Industrial Disputes Act, 1947, cannot be applied for deciding the dispute regarding the payment of gratuity. The second respondent specifically found that the respondents 3 to 23 are entitled to get additional gratuity, taking benefit under section 12(3) settlement dated 17.12.1997. The appeal filed before the first respondent was also rejected relying on section 2(e) of the Payment of Gratuity Act, 1972.

12. In the decision reported in 2006 (4) LLN 157 (Anand Regional Co-Operative Oil Seedsgrowers' Union, Ltd. v. Shaileshkumar Harshadbhai Shah), the Honourable Suprme Court while dealing with 'Workmen' under section 2(s) of the Industrial Disputes Act, 1947, in paragraphs 14 to 17 held as follows,

> "14. For determining the question as to whether a person employed in an industry is a workman or not; not only the nature of work performed by him but also the terms of the appointment in the job performed are relevant considerations.
>
> 15. Supervision contemplates direction and control. While determining the nature of the work performed by an employee, the essence of the matter should call for consideration. An undue importance need not be given for the designation of an employee, or the name assigned to, the class to which he belongs. What is needed to be asked is as to what are the primary duties he performs. For the said purpose, it is necessary to prove that there were some persons working under him whose work is required to be supervised. Being in charge of the section alone and that too it being a small one and relating to quality control would not answer the test.
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> 16. The precise question came up for consideration in Ananda Bazar Patrika (Private) Ltd. v. Workmen ((1970) 3 SCC 248), wherein it was held:
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> > "The question, whether a person is employed in a supervisory capacity or on clerical work, in our opinion, depends upon whether the main and principal duties carried out by him are those of a supervisory character, or of a nature carried out by a clerk. If a person is mainly doing supervisory work, but, incidentally or for a fraction of the time, also does some clerical work, it would have to be held that he is employed in supervisory capacity; and, conversely, if the main work done is of clerical nature, the mere fact that some supervisory duties

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> are also carried out incidentally or as a small fraction of the work done by him will not convert his employment as a clerk into one in supervisory capacity."
>
> 17. A person indisputably carries on supervisory work if he has power of control or supervision in regard to recruitment, promotion, etc. The work involves exercise of tact and independence."

13. Applying the rules and the above Supreme Court decision to the facts of this case and in view of the specific finding given by the statutory authority viz., the second respondent holding that the respondents 3 to 23 are employees as defined under section 2(e) of the Payment of Gratuity Act, 1972, and having regard to the fact that even though the respondents 3 to 23 are in managerial cadre, they have no administrative power in the day-to-day administration of the Bank, I am of the view that there is no perversity in the finding given by the second respodnent, which was rightly confirmed by the first respondent.

14. The power of exercising jurisdiction of the High Courts under Article 226 in Labour matters is considered by the Honourable Supreme Court in the following decisions.

(a) In Apparel Export Promotion Council v. A.K. Chopra, (1999) 1 SCC 759, in paragraph 16 the Honourable Supreme Court held as follows,

> "16. The High Court appears to have overlooked the settled position that in departmental proceedings, the disciplinary authority is the sole judge of facts and in case an appeal is presented to the appellate authority, the appellate authority has also the power/and jurisdiction to reappreciate the evidence and come to its own conclusion, on facts, being the sole fact-finding authorities. Once findings of fact, based on appreciation of evidence are recorded, the High Court in writ jurisdiction may not normally interfere with those factual findings unless it finds that the recorded findings were based either on no evidence or that the findings were wholly perverse and/or legally untenable. ....."

(b) In Hari Shankar Sharma v. Artificial Limbs Mfg. Corpn., (2002) 1 SCC 337, in paragraph 12 it is held as follows,

> "12. ..... After a detailed analysis of the evidence, the Labour Court concluded that the appellants were not the employees of Respondent 1. The finding cannot be termed to be perverse.

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> Given this, it would have been inappropriate for the High Court under Article 226 to reappreciate the evidence and come to a different factual conclusion. The High Court did not do that nor do we propose to do so under Article 136."

(c) In AIR 2003 SC 3024 = (2003) 6 SCC 528 (Bharat Heavy Electricals Ltd. v. State of U.P.) in paragraph 13, the Honourable Supreme Court observed thus,

> "13. This apart, the finding that the respondent workmen were the employees of the appellant, does not rest merely on the test of control. The other evidence and facts and circumstances of the case were also kept in mind in recording such a finding including a vital fact that the appellant did not produce the records alleging that they were not available which led to drawing adverse inference against them. It is not possible for us to hold that such concurrent findings recorded by the Labour Court and the High Court that the workmen were to be treated as the employees of the appellant are either perverse or based on no evidence or untenable at all."

(d) In Workmen of Nilgiri Coop. Mkt. Society Ltd. v. State of T.N., (2004) 3 SCC 514, at page 532 :

> "50. The question whether the relationship between the parties is one of employer and employee is a pure question of fact and ordinarily the High Court while exercising its power of judicial review shall not interfere therewith unless the finding is manifestly or obviously erroneous or perverse."

(e) In the decision reported in (2005) 3 SCC 193 (Madurantakam Coop. Sugar Mills Ltd. v. S. Viswanathan) the Honourable Supreme Court in paragraph 12 held thus,

> "12. Normally, the Labour Court or the Industrial Tribunal, as the case may be, is the final court of facts in these types of disputes, but if a finding of fact is perverse or if the same is not based on legal evidence the High Court exercising a power either under Article 226 or under Article 227 of the Constitution can go into the question of fact decided by the Labour

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Court or the Tribunal. But before going into such an exercise it is necessary that the writ court must record reasons why it intends reconsidering a finding of fact. In the absence of any such defect in the order of the Labour Court the writ court will not enter into the realm of factual disputes and finding given thereon. A consideration of the impugned order of the learned Single Judge shows that nowhere has he come to the conclusion that the finding of the Labour Court was either perverse or based on no evidence or based on evidence which is not legally acceptable. Learned Single Judge proceeded as if he was sitting in a court of appeal on facts and item after item of evidence recorded in the domestic enquiry as well as before the Labour Court was reconsidered and findings given by the Labour Court were reversed. We find no justification for such an approach by the learned Single Judge which only amounts to substitution of his subjective satisfaction in the place of such satisfaction of the Labour Court."

(f) In Central P&D Inst. Ltd. v. Union of India, (2005) 9 SCC 171, the Honourable Supreme Court held thus,

"6. The finding arrived at by the Tribunal, Single Judge and the Division Bench is that the workperson has put in 240 days during the relevant period hence her services could not have been terminated without taking recourse to the procedure laid down in Chapter 5-A of the Standing Orders. This question being purely a question of fact we do not think that in a petition under Article 136 we would go into this issue unless of course we come to the conclusion that such finding of fact is totally perverse which ground is not available in this case."

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15. In view of the above specific finding, I see no perversity in the decision of the second respondent as confirmed by the first respondent.

16. There is no merit in the writ petition and the same is dismissed. No costs. Connected miscellaneous petition is also dismissed.

Vr

Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1. The Joint Commissioner of Labour, (Appellate Authority under the Payment of Gratuity Act, 1972) D.M.S.Office Complex, Teynampet, Chennai - 600 006.
2. The Assistant Commissioner of Labour, (Controlling Authority under the Payment of Gratuity Act, 1972),D.M.S.Office Complex, Teynampet, Chennai -600006.

+ one cc to Mr. P. Anbarasan, Advocate sr no. 18156
+ one cc to the Government Pleader sr no. 18594

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